

REMARKS

Claims 1-17 are pending in the instant application. Claim 12 has been canceled without prejudice. Claims 8, 11 and 17 have been amended. Claims 1-11 and 13-17 will be pending upon entry of the within amendment. Support for the instant amendments can be found throughout the specification and in the claims as originally filed. Applicants request reconsideration of the subject application based on the following remarks.

No new matter has been introduced by the instant amendments.

Amendment of any claim herein is not to be construed as acquiescence to any of the rejections/objections set forth in the instant Office Action, and was done solely to expedite prosecution of the application. Applicants make these amendments without prejudice to pursuing the original subject matter of this application in a later filed application claiming benefit of the instant application, including without prejudice to any determination of equivalents of the claimed subject matter.

Claims Rejections – 35 U.S.C. §112, second paragraph

Claims 8-10 are rejected, allegedly because the subject matter has not been adequately described. Claim 8 has been amended to incorporate the subject matter of formulae (1) and (2), found in claim 1 and claim 7. The rejection is overcome and withdrawal of the rejection is respectfully requested.

Claim Rejections – 35 U.S.C. §102(b)

Claims 1-17 are rejected under 35 U.S.C. §102(e) as allegedly anticipated by WO 2004/108857. It is alleged that WO 2004/108857 discloses metal complex compounds and organic electroluminescent devices comprising a pair of electrodes and at least one organic layer. The Office Action indicates that an English language translation of any priority document, as well as a statement of accuracy of such translation, is required if any such priority document is relied upon to overcome the rejection.

Applicants disagree with the rejection and respectfully traverse.

Applicants contend that WO 2004/108857 is not a valid reference under 35 U.S.C. §102(e). Additionally, 37 CFR §1.55(a)(4) indicates that an English language translation of a foreign priority document must be submitted together with a statement that the translation is accurate, in order to overcome the date of a reference.

Applicants contend that WO 2004/108857 published on December 16, 2004, was filed on June 1, 2004, and claimed priority to JP 2003-157006, filed on June 2, 2003, and JP 2004-092274, filed on March 26, 2004. Additionally, Applicants contend that only JP 2004-092274, filed on March 26, 2004, discloses the compounds of formula (11) in WO 2004/108857.

The instant application claims priority to JP 2003-374861, which was filed on November 4, 2003. Enclosed with this response is an English language translation of JP 2003-374861, as well as a statement that the translation is accurate. The submission of the English language translation of JP 2003-374861 and the statement of accuracy are made in accordance with the guidelines provided in 37 CFR §1.55(a)(4).

Applicants therefore submit that the subject matter of the instant application was not described by WO 2004/108857, or any corresponding priority application before the instant invention, and WO 2004/108857 is not a valid reference under 35 U.S.C. §102(e). Withdrawal of the rejection is respectfully requested.

Claims 11 and 13-16 are rejected under 35 U.S.C. §102(b), as allegedly being anticipated by Zhang et al. (Synthetic Communications, 2001, 31(8), pp 1129). Claims 11-17 are rejected under 35 U.S.C. §102(b), as allegedly being anticipated by Bonnemann et al. (Synthesis, 1975, 9, pp 600).

Applicants have amended claim 11 to incorporate the embodiments of claim 12, and have further amended claim 11 and claim 17 to remove the recitation of " $-(CR_1R_2)_{n1}-$ " from claim 11 and claim 17. Additionally, the phrase "coordination bonded to a platinum atom" has been removed from claim 11 and claim 17. Based on formula (3), the compound being claimed is clearly the ligand, not the ligand-metal complex. The instant claims as amended are thus distinct from the teachings of Zhang and Bonnemann. Withdrawal of the rejection is respectfully requested.

Obviousness-type Double Patenting

Claims 1-17 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting in view of claims 1-14 of USSN 11/363,182. Applicants traverse the rejection but are amenable to filing a terminal disclaimer upon allowance of the instant claims.

In view of the above remarks, Applicants believe the pending application is in condition for allowance. Should any of the claims not be found to be allowable, the Examiner is requested to telephone Applicants' undersigned representative at the number below. Applicants thank the Examiner in advance for this courtesy.

The Director is hereby authorized to charge or credit any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 65108 (71526).

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Respectfully submitted,

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